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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/736,180      | 12/15/2003  | Steven P. Buysse     | 2081 CON 2 CIP CON  | 4369             |

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UNITED STATES SURGICAL,  
A DIVISION OF TYCO HEALTHCARE GROUP LLP  
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NORWALK, CT 06856

EXAMINER

GIBSON, ROY DEAN

ART UNIT PAPER NUMBER

3739

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/736,180

Applicant(s)

BUYSSE ET AL.

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/52005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **Formal Matters**

In light of new references found, the allowability of the claims as set forth in the last Office action is withdrawn. This Office action is non-final.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandler et al. (6,6334,861) in view of Yates et al. (US H2037 H).

Chandler et al. disclose a bipolar electrosurgical instrument essentially as claimed except for a stop for maintaining a separation distance between the opposable seal surfaces and the specific range of closure pressure of about 3-16 kg/cm<sup>2</sup> (col. 3, line 7-col. 5, line 13).

As to the lack of disclosure of a stop member, the examiner maintains that it would have been obvious to a skillful artisan to recognize that shorting would occur between the opposable seal surfaces if they make contact while the RF energy is applied. Therefore, such a stop member provides additional safety to avoid this contingency.

As to the range of closure pressure, Yates et al. disclose an electrosurgical hemostatic device wherein the range of closure pressure for forming a required tissue

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seal is 30 – 250 psi (30 psi is  $10.2 \text{ kg/cm}^2$  and therefore, overlaps the claimed range: see col. 3, lines 20-29 and col. 4, lines 27-35). Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Chandler et al., as taught by Yates et al., to provide a closure pressure at about 30 psi ( $10.2 \text{ kg/cm}^2$ ) to provide an appropriate seal pressure to tissue.

Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandler et al. and Yates et al. as applied to claim 6 above and further in view of Treat et al. (6,860,880). Neither Chandler et al. nor Yates et al. disclose the opposable seal surfaces include a non-stick material for reducing tissue adhesion. But, Treat et al. disclose an instrument for sealing tissue wherein the opposable seal surfaces include a non-stick material such as nichrome or an alloy thereof for such a purpose (col. 17, lines 1-11). Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Chandler et al., as taught by Treat et al., to provide the additional advantage of a non-stick material or coating for reducing tissue adhesion.

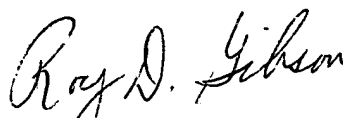
Further to claim 11, the examiner maintains that it would have been obvious to manufacture the stop from an (electrically) insulative material.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on M-F, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Roy D. Gibson  
Primary Examiner  
Art Unit 3739

July 25, 2005